

advisability of permanent security measures.

The Coast Guard is now establishing a permanent RNA and two permanent safety and security zones within Long Island Sound as part of a comprehensive, port security regime designed to safeguard human life, vessels and waterfront facilities from sabotage or terrorist acts. This permanent RNA incorporates the provisions of the temporary RNA that have been in place since December 10, 2001, and expands the operating requirements for vessels within the RNA. This rule also establishes two permanent safety and security zones. The zones have been tailored to fit the needs of security, while minimizing the impact on the maritime community.

Discussion of Comments and Changes

We received two (2) letters commenting on the notice of proposed rulemaking. The first comment letter recommended that proposed regulation 33 Code of Federal Regulations (CFR) 165.153(d)(3) be amended to include not only towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo, but rather to include all primary towing vessels engaged in towing. The section has been revised to include all towing vessels engaged in towing. In addition, we have included a provision in the rule that exempts towing vessels engaged in coastwise trade. This revision reflects the intention of the proposed rulemaking, which was, in part, to facilitate trade in the COTP Long Island Sound Zone consistent with the needs of safety and security. This exemption permits coastwise tug and barge units to move freely within United States waters.

In addition, the comment indicated to us that combining the inspection and advanced authorization requirements into one regulation in proposed section 165.153(d)(3) may have been confusing with respect to the two distinct requirements imposed. To clarify these requirements, section 165.153(d)(3) has been revised into two separate regulations for inspection and authorization, located in the final rule in sections 165.153(d)(3) and 165.153(d)(4), respectively. Subsequent paragraphs (4) through (8) in the proposed regulation 165.153(d) have been renumbered as paragraphs (5) through (9), respectively.

The second letter contained 12 distinct comments and/or recommendations regarding the proposed regulations. Each of these comments, and the response taken to each in the final regulations, are addressed below:

The first comment questioned the need for defining "public vessels" both in sections 165.153(b) and (c)(3). We agree that this is unnecessary repetition of the definition of "public vessels;" as such, the definition of "public vessels" has been removed from the final rule in section 165.153(b).

The second comment asked for clarification regarding the definition of "commercial vessel." Specifically, the comment asked whether a commercial vessel is a vessel in commercial service or a vessel engaged in commerce. The proposed regulation used the term "commercial vessel" as the title of section 165.153(d)(6). While the content of this section is clear in its applicability of the vessel operating requirements to those vessels in commercial service, the use of the term "commercial vessel" in this section is potentially confusing. This regulation was intended to apply to those vessels engaged in commercial service, as that term is defined in section 165.153(c)(1). For clarification, the title of the final rule section 165.153(d)(7) has been changed to "vessels engaged in commercial service." In addition, the text of the regulation has been revised to prohibit vessels from entering within a 100-yard radius of any vessel "engaged in commercial service," vice the proposed regulation language of "vessel in commercial service."

The third comment asked whether "engaged in commerce" used in the definition of public vessel in proposed section 165.153(c)(3) differs from the definition of "commercial service" in proposed section 165.153(c)(1). The definitions were intended to be the same in the proposed regulation. The use of "engaged in commerce" in the proposed regulation has been revised to read "engaged in commercial service"; this reflects the intention of the original proposed regulation, and is consistent with the derivation of the definition of "public vessel," which is found in title 46 United States Code, sections 2101(24)(A) and (B).

The fourth comment asked whether the tonnage threshold in proposed section 165.153(d)(2) applies to individual vessels or whether these apply to the combined tonnage of towing vessels and their tows. As proposed, and as implemented here, the tonnage limitation applies to individual vessels. The standard industry practice is for the tugboat operator to issue the security call for both manned and unmanned barges. It was not the intention of the proposed regulation to require vessels under tow to make their own security call in addition to that made by the tugboat. In addition, this

section was only intended to address vessels engaged in towing of barges, and was not intended to encompass recreational vessels or commercial assistance towing. The final regulation located in section 165.153(d)(2) has been revised as a result of this comment to include all vessels engaged in towing barges.

The fifth comment recommended applying an exemption for vessels in innocent passage to proposed regulation 165.153(d)(4), since one was applied in proposed section 165.153(d)(3). Innocent passage, as defined under Articles 18 and 19 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS II), involves "navigation through the territorial sea for the purpose of (a) traversing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility." Proposed section 165.153(d)(4) (now section 165.153(d)(5)) requires vessels over 1600 gross tons operating within three nautical miles from the territorial sea baseline to receive COTP authorization prior to vessel movements. As the internationally recognized rights of "innocent passage" could potentially be impacted in this proposed section as well as proposed section 165.153(d)(3), we addressed this comment in regards to both proposed sections and made appropriate changes in the regulation.

The inspection and authorization requirements in proposed section 165.153(d)(3) (now final sections 165.153(d)(3) and (d)(4)) were intended to require all vessels bound for a port or place in the United States, and not otherwise exempted, to be inspected and/or obtain COTP authorization prior to entering within three nautical miles of the territorial sea baseline. It contained a complete exemption for vessels in innocent passage. The intention of the requirements in proposed section 165.153(d)(4) (now section 165.153(d)(5)) was for vessels over 1600 gross tons, operating within three nautical miles of the territorial sea baseline or within internal waters, to be required to receive authorization prior to any intentional vessel movements. As originally proposed, these two sections, 165.153(d)(3) and (d)(4) were intended to protect against vessels entering within or operating within three nautical miles of the territorial sea baseline and in the internal waters of the United States. These vessels present potential security concerns which these regulations were designed to protect against.